

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
WILLIAM CONSTANT,

Plaintiff,

- against -

ANTHONY J. ANNUCCI, et al.,

Defendants.
----- X

Defendants Motion to Dismiss is
Denied without prejudice for failure
to follow my Individual Practices.
(See § 3.A.ii.) Clerk of the Court
requested to terminate
the motion (doc. 22).
16 Civ. 3985 (NSR)

**NOTICE OF DEFENDANTS'
PARTIAL MOTION TO DISMISS**

Dated: Nov. 4, 2016

SO ORDERED:



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

PLEASE TAKE NOTICE, that upon the accompanying memorandum of law,
defendants Anthony J. Annucci, Acting Commissioner of the New York State Department of
Corrections and Community Supervision ("DOCCS"), Albert Prack, Director of DOCCS Special
Housing and Inmate Disciplinary Program, William Lee, former Superintendent of DOCCS
Green Haven Correctional Facility ("Green Haven"), Frederick Bernstein, M.D., Facility Health
Services Director of Green Haven, Robert Bentivegna, M.D., DOCCS physician, Correction
Officer ("CO") Nedzad Dapcevic, CO Ronald Cabral, CO Antonio Alban, CO Brian Sturtevent,
CO Jonathan Markwick, CO Bryan Hess, and CO Michael Vennero, by their attorney, Eric T.
Schneiderman, the Attorney General of the State of New York, hereby move this Court before
the Honorable Nelson S. Roman, United States District Judge, at the United States Courthouse,
300 Quarropas Street, White Plains, NY 10601, for an Order pursuant to Rules 12(b)(1) and
12(b)(6) of the Federal Rules of Civil Procedure, granting Defendants' partial motion to dismiss
Plaintiff's Complaint, on the grounds that all claims for monetary damages against defendants in
their official capacities fail due to Eleventh Amendment immunity, all claims against Acting
Commissioner Annucci, Superintendent Lee, and Director Prack fail for not adequately pleading
personal involvement, Commissioner Annucci, Superintendent Lee, and Director Prack are

entitled to qualified immunity, and for such further relief as this Court deems just and proper.

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED**

DOC #:

DATE FILED: 11/4/2016

PLEASE TAKE FURTHER NOTICE, that unless otherwise directed by the Court, pursuant to Local Civil Rule 6.1(b), any opposition papers are to be served within fourteen (14) days after service of defendants' moving papers. Reply papers shall be served within seven (7) days after service of the opposition papers.

Dated: New York, New York
November 3, 2016

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for the Defendants

By:

/s/ James B. Cooney

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